



NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

[NRC-2023-0130]

RIN 3150-AL02

Increase in the Maximum Amount of Primary Nuclear Liability Insurance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to increase the required amount of primary nuclear liability insurance from \$450 million to \$500 million for each nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 electrical kilowatts or more. This change complies with the provision in the Price-Anderson Amendments Act of 1988 that states the amount of primary financial protection required of licensees by the NRC shall be the maximum amount available at reasonable cost and on reasonable terms from private sources.

DATES: This final rule is effective on January 1, 2024.

ADDRESSES: Please refer to Docket ID NRC-2023-0130 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0130. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select

“Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC’s PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stewart Schneider, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-4123, email:

Stewart.Schneider@nrc.gov and Mable Henderson, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3760, email: Mable.Henderson@nrc.gov. Both are employees of the NRC.

SUPPLEMENTARY INFORMATION:

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I. Discussion

The NRC’s regulations in part 140 of title 10 of the *Code of Federal Regulations* (10 CFR), “Financial Protection Requirements and Indemnity Agreements,” provide requirements and procedures for implementing the financial protection requirements for certain licensees and other persons under the Price-Anderson Amendments Act of 1988

(Pub. L. 100–408) (Price-Anderson Act), incorporated as Section 170 of the Atomic Energy Act of 1954, as amended (AEA). The Price-Anderson Act amended § 170b.(1) to state that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more (henceforth referred to as large operating reactors), “the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources.” This requirement of the Price-Anderson Act is implemented in the NRC’s regulations at § 140.11 “Amounts of financial protection for certain reactors.” Section 140.11(a)(4) refers to the current dollar amount of the maximum amount liability insurance from private sources of \$450 million. Therefore, § 140.11(a)(4) currently requires large operating reactors to have and maintain primary nuclear liability insurance in the amount of \$450 million.

In a letter dated July 14, 2023, American Nuclear Insurers (ANI), the underwriter of American nuclear liability policies, acting on behalf of its member companies, notified the NRC that it will be increasing “its maximum available primary nuclear liability limit from \$450 million to \$500 million, effective on January 1, 2024” (ADAMS Accession No. ML23212A986). The ANI makes such adjustments on a non-periodic basis. The last such adjustment was made in 2017, and the NRC revised § 140.11 to reflect the increased maximum available amount of primary nuclear liability insurance (81 FR 96347; December 30, 2016).

To implement this adjustment, in accordance with the Price-Anderson Act, the NRC is revising 10 CFR part 140 to require large operating reactors to have and maintain \$500 million in primary financial protection.

The NRC is not currently revising the appendices in § 140.91, § 140.92, or § 140.93 that provide general forms of liability policies and indemnity agreements that were determined to be acceptable to the Commission. These appendices include historical insurance providers and protection amounts for primary liability insurance that are no longer in use (for example, values of \$124 million and \$36 million from the 1979

final rule (44 FR 20632; April 6, 1979) and values of \$200 million, \$155 million, and \$45 million from the 1989 final rule (54 FR 24157; June 6, 1989)). However, these appendices continue to provide relevant general forms of policies and agreements.

II. Rulemaking Procedure

This final rule is being issued without prior public notice or opportunity for public comments. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require an agency to use the public notice and comment process “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” In this instance, the NRC finds, for good cause, that solicitation of public comment on this final rule is unnecessary because the Price-Anderson Act requires a non-discretionary adjustment in the maximum amount required for primary nuclear liability insurance. Requesting public comment on this non-discretionary adjustment, which is required by statute, would not result in a change to the adjusted amount.

III. Section-by-Section Analysis

The following paragraph describes the specific changes that are reflected in this final rule.

§ 140.11 Amounts of financial protection for certain reactors.

In paragraph (a)(4), this final rule removes “\$450,000,000” and replaces it with the increased maximum amount of primary nuclear liability insurance of “\$500,000,000”.

IV. Regulatory Flexibility Certification

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C 553(b), to publish a general notice of proposed rulemaking

(5 U.S.C. 604). As discussed in this document under Section II, “Rulemaking Procedure,” the NRC is not publishing this final rule for notice and comment. Accordingly, the NRC has determined that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

V. Regulatory Analysis

A regulatory analysis was not prepared for this final rule because the change in the maximum amount of nuclear liability insurance is mandated by the Price-Anderson Act. This final rule does not involve an exercise of Commission discretion.

VI. Backfitting and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. These mandatory adjustments are non-discretionary, required by statute, and do not represent any change in position by the NRC with respect to the design, construction, or operation of a licensed facility.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

VIII. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act

This final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing collections of information were approved by the Office of Management and Budget, approval number 3150-0039.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects in 10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended;

and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 140.

PART 140 - FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY

AGREEMENTS

1. The authority citation for part 140 continues to read as follows:

AUTHORITY: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 140.11 [Amended]

2. In § 140.11, amend paragraph (a)(4) by removing the number “\$450,000,000” and adding in its place the number “\$500,000,000”.

Dated: September 29, 2023.

For the Nuclear Regulatory Commission.

Scott A. Morris,
Acting Executive Director for Operations.

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